

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

IN RE:

THAIR ALI BARGHOUTHI, MD

Complaint Nos.	17-156-W
	17-157-J
	17-158-S
	17-159-D
	17-160-M
	17-176-H
	18-23-N

CONSENT ORDER

The West Virginia Board of Medicine and Thair Ali Barghouthi, MD (“Dr. Barghouthi”), freely and voluntarily enter into the following Consent Order pursuant to West Virginia Code § 30-3-1, *et seq.*

FINDINGS OF FACT

The Board and Dr. Barghouthi stipulate to the truthfulness and accuracy of the facts, as set forth herein below:

1. Dr. Barghouthi holds an active license, License Number 16708, to practice medicine and surgery in the state of West Virginia. Dr. Barghouthi’s address of record with the Board is in Beckley, West Virginia.
2. Dr. Barghouthi’s self-identified area of medical specialty is cardiovascular disease.
3. This Consent Order relates to seven (7) complaints against Dr. Barghouthi which are currently pending before the Board and are identified as following Complaint Nos.: 17-156-W, 17-157-J, 17-158-S, 17-159-D, 17-160-M, 17-176-H and 18-23-N (collectively referred to hereinafter as “Complaints”).

4. All Complaints arise from patients who allegedly underwent nuclear stress tests performed by Dr. Barghouthi at the Raleigh Hearth Clinic (“RHC”), which is Dr. Barghouthi’s office located in Beckley, West Virginia.

5. The Complaints alleged that Dr. Barghouthi breached the standard of care while performing nuclear stress tests such that the patients were potentially exposed to the Hepatitis C virus (“HCV”) and/or the Hepatitis B virus (“HBV”).

6. In or about 2015, the West Virginia Department of Health and Human Resources (“DHHR”) conducted an investigation of various healthcare facilities, including RHC, following reports of a potential outbreak of HCV and HBV.

7. DHHR issued a report of its investigation in or about November 2015, which indicated that certain unidentified patients were infected by HCV and/or HBV while undergoing nuclear stress tests at RHC. DHHR could not identify the precise mechanism of transmission, but concluded that it was likely the result of inadvertent needle/syringe reuse.

8. In its report, DHHR indicated that it made recommendations to Dr. Barghouthi to implement certain corrective and preventative measures at RHC to eliminate the risk of transmission.

9. Dr. Barghouthi denies that he breached the standard of care and further denies that the transmission of HCV and/or HBV occurred at RHC.

10. The Complaint Committee proceeded with its investigation of the Complaints against Dr. Barghouthi, which included retaining an independent physician consultant to conduct an independent review of the records and documents obtained in the course the Committee’s investigation.

11. Based on the totality of its investigation, the Complaint Committee identified concerns with Dr. Barghouthi's nuclear stress testing protocols and procedures.

12. At this time, Dr. Barghouthi is no longer performing nuclear stress tests at RHC.

13. The Board and Dr. Barghouthi voluntarily enter into this Consent Order to resolve Complaint Nos. 17-156-W, 17-157-J, 17-158-S, 17-159-D, 17-160-M, 17-176-H and 18-23-N, and to establish appropriate terms and conditions upon Dr. Barghouthi's practice of medicine in West Virginia.

CONCLUSIONS OF LAW

The Board and Dr. Barghouthi stipulate to the following conclusions of law:

1. Dr. Barghouthi's license to practice medicine and surgery in the State of West Virginia is subject to regulation and discipline by the West Virginia Board of Medicine, the "regulatory and disciplinary body for the practice of medicine and surgery" for physicians, podiatrists and physician assistants in West Virginia. W.Va. Code § 30-3-5 and § 30-3-7(a).

2. The Board has a mandate to ensure "a professional environment that encourages the delivery of quality medical services" to protect the public interest. W.Va. Code § 30-3-2.

3. The West Virginia Medical Practice Act sets forth conduct which may render an individual unqualified for licensure or subject to discipline or other restrictions upon licensure. W.Va. Code § 30-3-14.

4. Pursuant to W.Va. Code § 30-1-8(c), the Board has promulgated legislative rules that "delineate conduct, practices or acts which, in the judgment of the board, constitute professional negligence, a willful departure from accepted standards of professional conduct

and/or which may render an individual unqualified or unfit for licensure, registration or other authorization to practice.” W. Va. Code R. § 11-1A-12.

5. Probable cause may exist to substantiate disciplinary charges against Dr. Barghouthi pursuant to the West Virginia Medical Practice Act and the Board’s legislative rules including, but not limited to, the following provisions:

- a. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. §§ 11-1A-12.1.e and 12.1.j, relating to dishonorable, unethical or unprofessional conduct including, but not limited to, any departure from, or failure to conform to, the standards of acceptable and prevailing medical or podiatric practice; and/or
- b. W. Va. Code § 30-3-14(c)(17) and W. Va. Code R. § 11-1A-12.1.x. relating to engaging in malpractice or the failure to practice medicine with that level of care, skill and treatment which is recognized by a reasonable, prudent physician engaged in the same or similar specialty as being acceptable under similar conditions and circumstances; and/or
- c. West Virginia Code § 30-3-14(c)(20) and W. Va. Code R. § 11-1A-12.1.i, relating to a lack of professional competence to practice medicine with a reasonable degree of skill and safety to patients.

6. It is reasonable, appropriate, and in the public interest to impose the disciplinary action set forth in this Consent Order upon Dr. Barghouthi’s West Virginia medical license in lieu of convening disciplinary proceedings in this matter.

7. This Consent Order sets forth reasonable, appropriate and necessary terms, conditions, limitations and restrictions upon the practice of medicine and surgery by Dr. Barghouthi in West Virginia.

8. This Consent Order relates only to Complaint Nos. 17-156-W, 17-157-J, 17-158-S, 17-159-D, 17-160-M, 17-176-H and 18-23-N, and does not relate to any other complaint that may be pending against Dr. Barghouthi nor any complaint against Dr. Barghouthi that may be received by the Board in the future.

CONSENT

By signing his name to this Consent Order, Thair Ali Barghouthi, M.D., acknowledges that he understands and agrees with the following:

1. Dr. Barghouthi has read and understands this entire Consent Order;
2. Dr. Barghouthi agrees that he has been given adequate time and opportunity to review and consider the terms set forth in this Consent Order;
3. Dr. Barghouthi understands that he has the right to legal representation in this matter, at his own expense, and agrees that he has been afforded adequate time and opportunity to exercise his right to consult with his attorney regarding the legal effect of this Consent Order;
4. Dr. Barghouthi understands that this Consent Order is a legally binding Order of the West Virginia Board of Medicine that affects his rights and privileges;
5. Dr. Barghouthi acknowledges that he is fully aware that, without his consent, no permanent legal action may be taken against him except after a hearing held in accordance with West Virginia Code § 30-3-14(h) and § 29A-5-1, *et seq.*;
6. Dr. Barghouthi is aware of his legal rights in this matter, in addition to his right to be represented by counsel at his own expense, including: the right to a formal hearing, after reasonable notice, before the West Virginia Board of Medicine on the disciplinary charges before the Board; the right to confront and cross-examine witnesses against him; the right to present evidence and testify on his own behalf; the right to the issuance of subpoenas to compel the

attendance of witnesses and the production of documents; the right to appeal under Chapter 29A of the West Virginia Code in the event of a final order or decision adverse to him;

7. Other than his right to legal counsel, which Dr. Barghouthi has exercised, Dr. Barghouthi knowingly and voluntarily waives all such additional legal rights, and agrees to the entry of this Consent Order relative to his practice of medicine in the State of West Virginia; and

8. Dr. Barghouthi understands that this Order is a public document which will be available for public inspection, will be accessible through the Board's website, and will be a permanent part of his historical record with the Board. Matters contained herein will be reported to the National Practitioner Data Bank, and may be reported to other jurisdictions, the Federation of State Medical Boards and as otherwise required by law.

ORDER

WHEREFORE, on the basis of the foregoing stipulated Findings of Fact and Conclusions of Law, and with the consent of Dr. Barghouthi, the West Virginia Board of Medicine hereby **ORDERS** as follows:

1. Dr. Barghouthi is prohibited from performing or directing the performance of nuclear stress tests in an office-based setting.

2. Dr. Barghouthi understands and agrees that any violation of this Consent Order may subject him to additional disciplinary action by the Board, as permitted by law.

3. This Consent Order shall be deemed entered on the date that this Order, with all required signatures affixed hereupon, is received in the Board's 101 Dee Drive, Charleston, West Virginia, office. The Executive Director of the West Virginia Board of Medicine is hereby authorized to denote the date of entry on behalf of the Board in accordance with this paragraph.

ENTERED ON: March 5, 2019

WEST VIRGINIA BOARD OF MEDICINE



Kishore K. Challa, MD, FACC
President

Date: 3/4/19



Catherine C. Slemp, MD, MPH
Secretary

Date: 2/26/2019

ACCEPTANCE

I, THAIR ALI BARGHOUTH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT ORDER. I HAVE BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO CONSIDER THIS CONSENT ORDER, AND I UNDERSTAND THE EFFECT IT WILL HAVE UPON MY LICENSE TO PRACTICE MEDICINE AND SURGERY IN WEST VIRGINIA.

BY SIGNING THIS CONSENT ORDER, I HAVE WAIVED CERTAIN RIGHTS, BUT I DO SO KNOWINGLY AND VOLUNTARILY, AND I DO NOT WISH TO ASSERT THOSE RIGHTS IN THIS MATTER.

I UNDERSTAND THAT I HAVE THE RIGHT TO LEGAL COUNSEL, WHICH I HAVE EXERCISED. I HAVE BEEN PROVIDED WITH AMPLE TIME TO CONSULT WITH MY ATTORNEY AND OBTAIN LEGAL ADVICE REGARDING MY ACCEPTANCE OF THIS CONSENT ORDER.

I AM SIGNING THIS CONSENT ORDER VOLUNTARILY, AND I UNDERSTAND THE POTENTIAL CONSEQUENCES OF THIS CONSENT ORDER, AND ANY VIOLATIONS THEREOF.

Th Ali Barghouthi
Thair Ali Barghouthi, M.D.

Date: 02/15/2019

STATE OF West Virginia

COUNTY OF Raleigh, to-wit:

I, Stephanie C. Wiseman, a Notary Public for said county and state do hereby certify that Thair Ali Barghouthi, M.D., whose name is signed herein above has this day acknowledged the same before me.

Given under my hand this 15th day of February, 2019.

My Commission expires December 3, 2019

Stephanie C. Wiseman
Notary Public

